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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JAMES E. OAKLEY, II,

No. 2:02-cv-1205-MCE-JFM-P

12 Petitioner,

13 v.

ORDER

14 M.C. KRAMER, Warden,

15 Respondent.  
16 \_\_\_\_\_/

17 Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254. On September 7, 2005, judgment was entered in this court  
19 denying the petition. On August 29, 2006, petitioner filed a notice of appeal. Before petitioner  
20 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R  
21 .App. P. 22(b). Federal Rule of Appellate Procedure 22(b) requires the district court judge who  
22 rendered a judgment denying such petition to “either issue a certificate of probable cause or state  
23 the reasons why such a certificate should not issue.”

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1 The timely filing of a notice of appeal is a jurisdictional requirement. Scott v. Younger,  
2 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal following  
3 entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner's notice of appeal in this  
4 action was filed more than thirty days after entry of judgment.

5 The United States Court of Appeals for the Ninth Circuit has held that the issuance of a  
6 certificate of probable cause cannot vest the court of appeals with jurisdiction if jurisdiction is  
7 not proper in that court. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978). The rationale of  
8 Hayward applies with equal force to a certificate of appealability. For these reasons, the court  
9 declines to issue a certificate of appealability.

10 IT IS SO ORDERED.

11 DATED: September 18, 2006

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15 MORRISON C. ENGLAND, JR.  
16 UNITED STATES DISTRICT JUDGE  
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